



The Dow Chemical Company
Midland, Michigan 48674

Express Mail

July 10, 2002

Joseph Cosentino, OSC
Removal Action Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
2890 Woodbridge Avenue
Edison, New Jersey 08837-3679

Re: Response of The Dow Chemical Company on behalf of Essex Chemical Company, Inc. to CERCLA Request for Information - Bayonne Barrel & Drum Site, Newark, New Jersey

Dear Mr. Cosentino:

The Dow Chemical Company ("TDCC"), on behalf of its wholly owned subsidiary, Essex Chemical Company, Inc. ("Essex") submits this Response to the information request received May 13, 2002 from the United States Environmental Protection Agency (U.S. EPA) regarding the Bayonne Barrel & Drum Site in Newark, New Jersey (the "Site"). We appreciate the Agency's grant of our request for an extension of time to respond to July 12, 2002.

Respondent reserves the right to supplement this response should any additional responsive information be discovered. Respondent has endeavored to answer the questions in the U.S. EPA's letter to the fullest extent reasonably possible. The enclosed information is being provided in an effort to cooperate with the U.S. EPA, without admitting or acknowledging that the U.S. EPA has the authority to require production of the information requested, or that the statutory authority asserted in the 104(e) letter is applicable. Additionally, nothing in this response should be construed as an admission of any liability or responsibility on the part of Respondent regarding any costs incurred by the U.S. EPA or any other party relating to the Site. Respondent reserves all defenses and rights available to it under the law.

Respondent has a policy and well-documented history of cooperation with federal, state, and local environmental authorities. It intends to cooperate, likewise, with respect to the instant Request. The extremely broad scope of the Request, however, compels Respondent to raise objections to the Request, both general and specific. In so doing,

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Respondent does not intend to diminish the seriousness of purpose with which it has investigated matters implicated by the Request or with which it has assembled this response. Respondent is not prepared, however, to undertake the overly broad and onerous burden demanded by the Request where that burden is not reasonably calculated to lend to pertinent or responsive information regarding the Bayonne Barrel & Drum Site.

GENERAL OBJECTIONS

Respondent asserts the following general objections to the Request. To the extent Respondent responds to questions to which it objects, such objections are not waived by the furnishing or providing of information.

1. Respondent objects to the Request to the extent that the Request exceeds the scope of U.S. EPA's authority under CERCLA §104(e)(2).
2. Respondent objects to the definition of "the Company" or "your Company," which is used in the Request to identify the entity and/or entities from which U.S. EPA seeks a response, is over-broad. The Request seeks information regarding the addressee as it is currently named and constituted, and also all its predecessors and successors, subsidiaries, divisions, branches, officers, managers, employees, contractors, trustees, partners, assigns, and agents of the addressee and its predecessors or successors, in disregard of legal limitations on corporate liability.
3. Respondent objects to the Request as overly broad and unduly burdensome. Specifically, Respondent objects to the Request because the Request seeks information regarding activities at a level of detail that is impossible to provide without extreme burden and oppression, if at all. The activities and/or information that are the subject of the Request took place or may have taken place over 35 years ago.
4. Documents provided to Respondent by U.S. EPA, by letter dated May 28, 2002, are unexplained. There is no foundation established for the documents and no basis for Respondent to interpret them. At best, the documents allege a business relationship between Respondent and the Site. They do not provide information to establish that Respondent has any CERCLA liability. Respondent reserves its objections with respect to these alleged nexus documents.
5. Respondent objects to the Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, and any other legally cognizable privilege. Respondent further objects to the Request to the extent it dictates the manner in which those privileges are to be asserted.
6. Respondent objects to the Request to the extent that it seeks information in the possession, custody, or control of U.S. EPA or any other local, state, or federal

governmental authority. Respondent further objects to the Request to the extent that it seeks information that is a matter of public record.

7. Respondent objects to the Request to the extent that it seeks information outside of Respondent's possession, custody or control.

Response

1. a. State the correct legal name and mailing address of the Company.

Response: Essex Chemical Corporation, 1250 Harmon Road, Auburn Hills, MI 48326.

- b. State the name(s) and address(es) of the current (or most recent) President, Chairman of the Board and Chief Executive Officer of the Company.

Response: Lawrence A. Denton is the current President and CEO of Essex Chemical Corporation. Alfonso Escudero is the Chairman of the Board.

- c. Identify the nature of the Company's form of business organization, e.g., corporation (publically or closely held), general partnership, limited partnership, limited liability company, or any other such forms of business organization, and identify the state in which the Company was organized.

Response: Essex Chemical Corporation is a wholly owned subsidiary of The Dow Chemical Company. Essex Chemical Corporation was organized in the State of New Jersey.

- d. Identify the state and date of incorporation or formation and the agent for service of process in the state of incorporation or formation, and in New Jersey, for the Company.

Response: Essex Chemical Company was incorporated in the State of New Jersey on March 15, 1955. The agent for service of process in New Jersey is The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, NJ 08628.

- e. If the Company is a parent, subsidiary or affiliate of another business entity or entities, identify each such entity and its relationship to the Company, and provide the information requested in Questions 1.a through 1.d.

Response: The parent corporation to Essex Chemical Corporation is The Dow Chemical Company located at 2030 Dow Center, Midland, MI 48674. Michael Parker is the current President, Director and CEO of The

Dow Chemical Company. The Dow Chemical Company is a corporation that was incorporated in the State of Delaware in 1947. The registered agent for The Dow Chemical Company in the State of Delaware is The Corporate Trust Company, Corporate Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801. The agent for The Dow Chemical Company in the State of New Jersey is The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, NJ 08628.

Essex Chemical Corporation may also have had a relationship with the entity Better Finishes and Coatings (listed on the document dated March 27, 1968, and entitled "Bayonne Barrel and Drum Company Partial Major Accounts List Service and Sales," provided to Respondent with EPA's May 28, 2002 letter). The document lists both Better Finishes and Coatings and Essex Chemical Corporation at the same address, given as 1401 Broad St., Clifton, NJ. By way of explanation, an entity known as Better Finishes and Coatings merged with Dixon Chemicals, which later became Essex Chemical Corporation. (Respondent has conducted a search for information and documents concerning Better Finishes and Coatings and, to the extent we have discovered any information, it is included in this response to EPA's request.)

- f. If the Company is a successor to, or has been succeeded by, another company, identify such other company and provide the information requested in Questions 1.a through 1.d.

Response: Not applicable.

- g. Provide the number of employees of the Company during the last year that the Company was actively operating.

Response: Following its acquisition by The Dow Chemical Company in 1988, Essex Chemical Company became a holding company and currently has no employees. In 1987, Essex Chemical Corporation had 1,300 employees.

- h. Provide the annual sales of the Company during the last fiscal year that the Company was actively operating.

Response: Following its acquisition by The Dow Chemical Company in 1988, Essex Chemical Corporation became a holding company with no reported sales. In 1987, Essex Chemical Corporation reported sales of \$208.8 million and losses of \$16.6 million.

2. If your Company has been dissolved, please state the date that this occurred. Provide copies of all documents pertaining to your Company's dissolution, including, but not limited to, the certificate of dissolution.

Response: Not applicable.

3. Has your Company been the subject of a bankruptcy filing under the United States Bankruptcy Code? If so, identify the Chapter of the Bankruptcy Code under which the bankruptcy was filed, the court in which the bankruptcy was filed, and provide copies of all bankruptcy petition(s) and schedules that have been filed by or with respect to the Company. In addition, state the current status of the bankruptcy proceedings and provide a copy of any final court order or judgement resolving the bankruptcy proceeding.

Response: Not applicable.

4. State whether the Company or any Company facility transacted any business with Bayonne Barrel & Drum for the cleaning, reconditioning, refurbishing, treatment, storage or disposal of any barrels, drums or other containers (hereinafter collectively referred to as "Containers"). If so:
- Describe the relationship (nature of services rendered or products sold to the Company) between Bayonne Barrel & Drum and the Company;
 - Provide copies of any contracts or agreements between the Company and Bayonne Barrel & Drum;
 - For each Company facility that transacted business with Bayonne Barrel & Drum, state the nature of the operations conducted at the facility including the time period in which the facility operated; and provide the name, address and current RCRA Identification Number of each such Company facility.

Response: Our search has uncovered no records or other information suggesting that Respondent provided drums or other containers to Bayonne Barrel & Drum for cleaning, reconditioning, refurbishing, treating, storing or disposing. Several former employees of Respondent recalled that its former Sayreville, NJ facility purchased reconditioned drums, but do not recall from whom. All the former employees of Respondent who were contacted in order to respond to this Information Request consistently indicated that Respondent did not send out drums for reconditioning. We note that the documents provided to Respondent by U. S. EPA, by letter dated May 28, 2002, are not inconsistent with these recollections and that the purchase of reconditioned drums does not give rise to CERCLA liability.

The document dated March 27, 1968, and entitled "Bayonne Barrel and Drum Company Partial Major Accounts List Service and Sales," provided to Respondent with EPA's May 28, 2002 letter, has an address for Better

Finishes and Coatings and Essex Chemical Corporation. That address is 1401 Broad St., Clifton, NJ. Documents reviewed in order to respond to this information request indicate that this was the headquarters office for Essex Chemical Corporation prior to its 1988 acquisition by TDCC; it was not the address of any manufacturing facility.

As indicated above, Respondent will supplement this response in the event responsive information is found.

5. If the Company, or any Company facility, transacted any business with Bayonne Barrel & Drum as described above in Question 4, provide the following information for each transaction:

- a. Identify the specific dates of each transaction, or where an exact date cannot be provided for a transaction, provide an approximation by month and year;
- b. Identify the number of Containers that were the subject of each such transaction;
- c. Describe the Containers that were the subject of such transactions, e.g., closed-head, open-head, steel drums, etc.
- d. Identify the purpose of such transactions.

Response: Please refer to response to Question 4.

6. If the Company, or any Company facility, transacted any business with Bayonne Barrel & Drum as described above in Question 4, provide the following information for each transaction:

- a. Did Bayonne Barrel & Drum provide some form of compensation in exchange for the Containers provided by the Company?
- b. If the answer to Question 6.a is affirmative, what was the amount per Container, and the form of the compensation? For example, did Bayonne Barrel & Drum provide a cash payment, or a credit against the Company's purchases of reconditioned Containers from Bayonne Barrel & Drum?
- c. Did Bayonne Barrel & Drum separately store Containers provided by the Company to clean, recondition, refurbish or otherwise treat and return to the Company?

- d. Did the Company Compensate Bayonne Barrel & Drum for cleaning, reconditioning, refurbishing or otherwise treating Containers for the Company?
- e. If the answer to Question 6.d is affirmative, what was the amount per Container, and the form of the compensation?

Response: Please refer to response to Question 4.

- 7. Describe any and all substances that the Containers provided by the Company to Bayonne Barrel & Drum contained at the time of the transaction, including the chemical content, physical characteristics and quantity by volume and/or weight of any and all these substances, and provide any material safety date sheets for such substances as may be in the possession, custody or control of the Company.

Response: Please refer to response to Question 4.

- 8. If you contend that the Containers provided to Bayonne Barrel & Drum did not contain any substance at the time of the transaction, provide the following information:
 - a. Describe any and all substances that the Containers had previously held, including the chemical content and physical characteristics;
 - b. Provide any material safety date sheets for such substances as may be in the possession, custody or control of the Company;
 - c. Describe in detail any treatment performed by the Company prior to the time that the Containers were transferred to Bayonne Barrel & Drum, including any process or procedure by which the Containers were emptied or cleaned.

Response: Please refer to response to Question 4.

- 9. Provide copies of all documents relating in any way to each transaction, including copies of pick-up or delivery receipts, unloading inspection reports, bills of lading, manifests, invoices, and/or Company records indicating payments made by or to Bayonne Barrel & Drum.

Response: Please refer to response to Question 4.

- 10. If the Company or any Company facility sent any Containers to Bayonne Barrel & Drum by using the services of a transporter unrelated to the Company, identify each such transporter, including by providing the transporter's name and address.

Response: Please refer to response to Question 4.

11. If a representative of the Company ever visited Bayonne Barrel & Drum, provide a description of activities and conditions at the Site has observed during any such visits. Provide a copy of any record of such visit.

Response: Please refer to response to Question 4.

12. Identify all individuals with knowledge of facts relating to the responses provided to this Request for Information. Identify each individual who assisted or was consulted or who answered on behalf of the Company in the preparation of its response to this Request for Information, and correlate each person to the questions for which he or she was consulted.

Rezones: Subject to and without waving its objections, Respondent states that Carol Dudnick, attorney, and Nanette Stieve, paralegal, investigated and conducted a search for documents and employees with information responsive to questions Nos. 1-13. In the course of their investigation, they contacted persons in the TDCC Corporate Legal Department, Records Management Center, at various facilities, and in several other corporate departments. Their investigation confirmed that Respondent has no documents regarding the Bayonne Barrel and Drum Site. Further, their investigation found no persons with Essex Chemical Company, or its parent, TDCC, with personal knowledge regarding the Bayonne Barrel and Drum Site. Aside from obtaining and seeking to obtain information in order to respond to this Request for Information, neither Ms. Dudnick nor Ms. Stieve has any personal knowledge of facts relating to the responses provided herein.

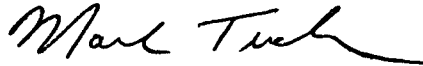
13. a. Do you have any additional information or documents that may help EPA identify other companies that may have been the source of, or otherwise responsible for, the hazardous substances or industrial wastes that came to be located at the Site? If so, please provide that information and those documents and identify the source(s) of your information.
- b. In addition, identify all individuals (other than those identified in your response to Question 12) who may have information or documents relating to the subject of this Request for Information, and/or the generation, handling, storage, transportation or disposal of the hazardous substances or industrial wastes that came to be located at the Site.

Response: Respondent is aware that Union Carbide Corporation responded to an information request received from U.S. EPA on November 16, 1995 regarding the Bayonne Barrel & Drum Site. Since the time of Union Carbide's response, Union Carbide (in 2001) has become a subsidiary of The Dow Chemical Company. Aside from information previously provided to U.S. EPA by Union Carbide and information provided to Respondent from U.S. EPA's own files, by letter dated May

28, 2002, Respondent has no additional information and knows no individuals that may assist EPA in identifying other companies that may have been involved at the Bayonne Barrel and Drum Site.

Finally, attached to the list of questions is a form of notarized certification regarding Respondent's response to this information request. Respondent is unaware of any CERCLA statutory authority that requires such a certification. However, Respondent is aware of its response obligations and has undertaken a reasonable and thorough search for information responsive to the Request and would not willfully submit any false information.

Very truly yours,



Mark Tucker
Assistant General Counsel
The Dow Chemical Company

cc: Sarah Flanagan, Esq.
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